

*United States Court of Appeals
for the Second Circuit*



**PETITION FOR
REHEARING**

76-1049

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P/S

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

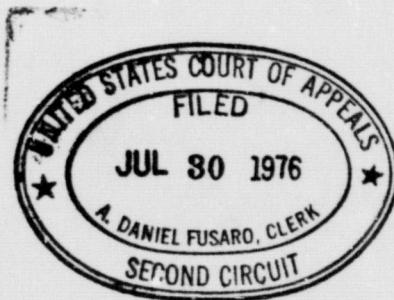
Docket No. 76-1049

ARTHUR BRECHT,

Defendant-Appellant.

PETITION FOR REHEARING

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK



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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

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Docket No. 76-1049

PETITION FOR REHEARING

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OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

This is a petition for rehearing requesting a remand to the United States District Court for the Eastern District of New York (Weinstein, D.J.) for re-sentence in light of this Court's July 16, 1976, opinion (Moore, Feinberg, Gurfein, C.J.J.).

On January 23, 1976, appellant Arthur Brecht was convicted of two counts charging violation of the Travel Act (18 U.S.C. §1952) and one count charging a violation of the Hobbs Act (18 U.S.C. §1951). All three counts arose from the same scheme by appellant Brecht, an employee of the Westinghouse Corporation,

to solicit a bribe in exchange for the award of a Westinghouse contract. Appellant was sentenced to concurrent two-year terms of incarceration on each count. Execution of the sentence was suspended, and concurrent three-year periods of probation were imposed.

On appeal, this Court reversed the two Travel Act convictions, holding that appellant's conduct, which constituted the state crime of commercial bribery, did not come within the ambit of the Travel Act, which proscribes "bribery." In so holding, this Court noted the absence of Congressional intent to punish as a Federal felony conduct which amounts only to a state law misdemeanor. The opinion also acknowledges that appellant's conduct, if prosecuted by the State of New York, is punishable by no more than a three-month period of incarceration or a one-year period of probation. The reversal of two of the three convictions requires a remand to the District Court for re-sentence. Although the sentences imposed were concurrent, the likelihood is that the fact of the three convictions affected the length of the sentence imposed. United States v. Mapp, 476 F.2d 67 (2d Cir. 1973).

Moreover, Judge Weinstein should be permitted the opportunity to reconsider the sentence in light of this Court's clear indication that the case should have been prosecuted in the state courts where the maximum sentence could not have exceeded three months in prison or a one-year term of probation.

CONCLUSION

For the foregoing reasons, rehearing should be granted in order to remand the case to the District Court for re-sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this petition for rehearing
has been served by mail upon the United States Attorney
for the Eastern District of New York.

New York, New York
July 30, 1976

W. Jeff P. Y.